The Requiring typically requires setting up or breaking down convention centers in the Chicago, Illinois area. Production businesses meetings and events, mostly at hotels and conventions within the meaning of Section 2(5) of the Act.

The parties have stipulated, and we find, that Stagehands and Decorators are both labor organizations within the meaning of Section 2(6) of the Act. The Employer performed services valued in excess of $50,000 in states other than the State of Illinois. The Employer provides skilled production labor for business meetings and events, mostly at hotels and convention centers in the Chicago, Illinois area. Production labor typically requires setting up or breaking down a stage, screen, or speaker area. The parties stipulated that the work in dispute is “the installation and dismantling of drapery and other soft goods in the production environment; including the installation and dismantling of pipe and drape at staged events or performances at hotels.”

Since at least 2006, the Employer has had separate collective-bargaining agreements with Stagehands and Decorators; both unions’ agreements cover the disputed work. The Employer’s president, Floyd Dillman, testified that Stagehands’ relationship with the Employer predates its 2006 contract. Dillman further testified that he had attempted to resolve the jurisdictional conflict between Decorators and Stagehands while negotiating the 2010 agreement with Stagehands by proposing the deletion of conflicting language and the addition of a side agreement clarifying that the conflicting language would not apply to Stagehands. Stagehands did not agree, and Dillman did not make any further attempt to alter Stagehands’ jurisdiction, either at that time or in the 2014 agreement.

From 2006 to 2016, the Employer assigned employees represented by both unions to the disputed work. Although the two unions were sometimes on the same worksite, they did not perform the disputed work together. At some of the major production venues in Chicago, including McCormick Place, Navy Pier, the Chicago Hilton, and the Palmer House, the Employer was contractually required to hire employees represented by a specific union. Dillman testified that for the remaining assignments, where he had discretion to choose one of the two unions (hereafter “discretionary” work), his preference was to assign the production work to Stagehands, with one consistent exception: where Decorators was already on site performing work for an exposition, Dillman testified that he would use Decorators to perform production work.

Beginning in June 2016, the Employer started to assign discretionary work it had traditionally given to Decorators to Stagehands. On the first occasion, after three employees represented by Decorators performed production work at the Chicago Sheraton, the Employer sent them home rather than assign them discretionary dismantling work, per the established practice. When doing so, the Employer informed Decorators that the Stagehands would perform the dismantling work. In response, Decorators filed a grievance, and the Employer opted to pay the Decorators-represented employees for the dismantling work rather than contest the grievance. On the sec-

1 In their briefs, the parties indicate that the disputed work is limited to discretionary production work, but the stipulation does not include this limitation. Further, Dillman testified that if the Board rules in favor of Stagehands, the Employer will disregard the venue’s rules and give the Palmer House work to employees represented by Stagehands.
ond occasion, the Employer assigned production work to Stagehands at the Chicago Hyatt. Finally, the Employer assigned production work to the Stagehands at the Palmer House, even though this was a venue that required the Employer to hire Decorators for production work. Decorators filed grievances in each case, claiming that the Employer failed to properly assign it production work. Deciding it was too expensive to continue to pay both Stagehands and Decorators any time a grievance was filed, the Employer told Stagehands that it would use Decorators for all further discretionary work involving drapery in hotels. This prompted an October 11, 2016 letter from Stagehands to the Employer threatening to strike and/or picket if the Employer “reassigns any of the work currently being performed by employees represented by Local 2 (Stagehands) to employees represented by USW Local 17(U)(Decorators).” Thereafter, the Employer assigned all of its production work to Stagehands-represented employees.

The Employer then filed an unfair labor practice charge, alleging that Stagehands violated Section 8(b)(4)(D) of the Act through its October 11, 2016 letter.

B. Work in Dispute

The parties stipulate, and we find, that the work in dispute is the installation and dismantling of drapery and other soft goods in the production environment; including the installation and dismantling of pipe and drapery at stage events or performances at hotels in the Chicago area.

C. Contentions of the Parties

Stagehands and the Employer assert that there is reasonable cause to believe that Stagehands violated Section 8(b)(4)(D), and therefore that the Board is required to make an award of the disputed work under Section 10(k) of the Act. The Employer and Stagehands further assert that there is no agreed-upon method for voluntary adjustment of the dispute in question that would bind all parties. On the merits, the Employer and Stagehands argue that the work in dispute should be awarded to the employees represented by Stagehands.

Decorators argue that the proceeding should be quashed because its grievances were intended to preserve work, an action that is not a proper basis for a 10(k) proceeding. However, if the Board reaches the merits, Decorators argue that the traditional factors considered in 10(k) proceedings weigh in favor of awarding the work to employees it represents.

D. Applicability of the Statute

Before the Board may proceed to a determination of dispute under Section 10(k) of the Act, the Board must find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Operating Engineers Local 150 (R&D Thiel), 345 NLRB 1137, 1139 (2005). This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute. See id. We are not satisfied that those requirements have been met in this case.

At first glance, this dispute might appear to be a jurisdictional dispute: there are competing claims for production work, and one of the parties threatened to strike if the Employer assigned work to the other party. In determining whether a genuine jurisdictional dispute exists, however, the Board must examine the “real nature and origin of the dispute.” See Teamsters Local 578 (USCP-Wesco), 280 NLRB 818, 820 (1986), aff’d sub nom. USCP-Wesco, Inc. v. NLRB, 827 F.2d 581 (9th Cir. 1987). If the dispute is “fundamentally over the preservation, for one group of employees, of work they have historically performed, it is not a jurisdictional dispute.” Machinists District 190 (SSA Terminal), 344 NLRB 1018, 1020 (2005), aff’d 253 Fed.Appx. 625 (9th Cir. 2007) (unpublished decision). Similarly, if the dispute is of the Employer’s own making, the Board will not resolve it in a 10(k) proceeding. See, e.g., Teamsters Local 107 (Safeway Stores), 134 NLRB 1320, 1322–1323 (1961). We find that both circumstances are present here.

First, we find that the nature of the dispute is work preservation. Both Decorators’ and Stagehands’ contracts with the Employer encompass the work in dispute at Chicago-area venues. From 2006 to 2016, the Employer accommodated the Unions’ overlapping contractual provisions—apparently to the Unions’ satisfaction—by assigning most of its production work to Stagehands, with two exceptions: where the venue was one where the Employer was contractually required to assign the work to Decorators, and discretionary work where Decorators was already on site performing exposition work. Beginning in 2016, however, the Employer altered this established practice—citing efficiency and cost consider-
Stagehands argue that a jurisdictional dispute exists because the production work is covered by both Unions' collective-bargaining agreements and was traditionally shared between the two Unions. Thus, Stagehands asserts that any attempt by Decorators to secure exclusive rights to production work is an attempt to acquire work, bringing the dispute within the jurisdiction of Section 10(k). If Decorators had attempted to secure all production work assigned by the Employer, then Stagehands would be correct. See, e.g., Laborers Local 265 (Henkels & McCoy, Inc.), 360 NLRB 819, 822 (2014) (where two unions had previously shared jurisdiction of work and one union claims sole jurisdiction, such a claim is not "work preservation," but "work acquisition"); Carpenters (Prate Installations, Inc.), 341 NLRB 543, 545 (2004) (finding work acquisition where "Carpenters claimed all of the disputed work, including that previously performed by employees represented by the Roofers.") (emphasis in original). Here, however, Decorators did not file grievances to secure exclusive rights to all production work or historically shared work. Instead, the grievances were filed to preserve production work—encompassed by the stipulated work in dispute—at venues where the Employer was contractually required to hire Decorators, or for discretionary work where Decorators-represented employees were already on site performing work for an exposition.

Stagehands further argues, in its brief to the Board, that there is a jurisdictional dispute because "to the extent that the Decorators have historically performed some of the work in dispute [we are now] seeking to acquire it." As the beneficiary of the Employer’s change in long-established work assignments, it is unsurprising that Stagehands would want to retain the additional work. But Section 10(k) is not a vehicle for awarding work where the dispute is of an employer’s own making. See generally Machinists District Lodge 160 (SSA Marine), 347 NLRB 549, 550 (2006) (and cited cases).

In sum, we find that the conduct does not give rise to a jurisdictional dispute within the meaning of Section 10(k) and Section 8(b)(4)(D) of the Act. The evidence fails to establish a traditional jurisdictional dispute between two rival groups of employees claiming the same work, with an innocent employer caught in the middle. Rather, we conclude that the Employer by its own actions—assigning to Stagehand-represented employees work historically performed by Decorators-represented employees—has created a work preservation dispute. Safeway Stores, supra. As such, this case is not appropriate for resolution under Section 10(k), and we quash the notice of hearing.

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3 Thus, Sec. 10(k) was intended “to protect employers from being ‘the helpless victims of quarrels that do not concern them at all.’” NLRB v. Radio & Television Broadcast Engineers Local 1212 (Columbia Broadcasting), 364 U.S. 573, 580–581 (1961). It was not intended to address controversies of the employer’s own making. Otherwise, “an employer could always create a jurisdictional dispute between employee groups [simply] by reassigning work.” Longshore & Warehouse Union Local 62-B v. NLRB, 781 F.2d 919, 925 (D.C. Cir. 1986).
ORDER

It is ordered that the notice of hearing issued in this case is quashed.

Dated, Washington, D.C. July 9, 2018

______________________________________
Mark Gaston Pearce, Member

______________________________________
Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD